

FIRST REGULAR SESSION

# HOUSE BILL NO. 228

## 92ND GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES SMITH (14), BEARDEN, GRAHAM, CUNNINGHAM (86),  
BRUNS, SHOEMAKER (8), HANAWAY (Co-sponsors), TAYLOR, COOPER (120), WASSON, BEAN,  
SCHNEIDER, WALLACE, PEARCE, FARES, BROWN, CRAWFORD, GUEST, NIEVES, THOMPSON,  
DEMPSEY, MOORE, ENGLER, DEEKEN, STEVENSON, QUINN, LUETKEMEYER,  
PHILLIPS AND CROWELL.

Read 1<sup>st</sup> time January 21, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0539L.01I

---

### AN ACT

To amend chapter 407, RSMo, by adding thereto five new sections relating to unsolicited commercial electronic mail.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be  
2 known as sections 407.1135, 407.1138, 407.1141, 407.1144, and 407.1147, to read as follows:

**407.1135. As used in sections 407.1135 to 407.1147, the following words and phrases  
2 mean:**

3       (1) "Electronic mail address", a destination, commonly expressed as a sequence of  
4 characters, to which electronic mail may be sent or delivered;

5       (2) "Initiate the transmission", the action by the original sender of an unsolicited  
6 electronic mail solicitation that results in receipt by a subscriber of that solicitation;

7       (3) "Subscriber", any person, corporation, partnership, or other entity who has  
8 subscribed to an interactive computer service and has been designated with one or more  
9 electronic mail addresses;

10       (4) "Unsolicited electronic mail", any communication through an interactive  
11 computer service for the purpose of encouraging the purchase or rental of, or investment  
12 in, property, goods or services, other than a communication responding to an electronic  
13 mail message initiated by the subscriber. An electronic mail communication to a  
14 subscriber that has an ongoing business relationship with the sender shall not be  
15 considered unsolicited electronic mail for purposes of sections 407.1135 to 407.1147.

**407.1138. No person or entity shall, after July 1, 2004, initiate the transmission of**

2 any unsolicited electronic mail to any subscriber in this state who has given notice to the  
3 attorney general, in accordance with rules promulgated pursuant to section 407.1141, of  
4 such subscriber's objection to receiving unsolicited electronic mail.

407.1141. 1. The attorney general shall establish and provide for the operation of  
2 a state database to compile a list of electronic mail addresses of subscribers who object to  
3 receiving unsolicited electronic mail. The attorney general shall have such database in  
4 operation no later than July 1, 2004.

5 2. Information contained in the database established pursuant to this section shall  
6 be used only for the purpose of compliance with this section or in a proceeding or action  
7 pursuant to sections 407.1135 to 407.1147. Such information shall not be considered a  
8 public record pursuant to chapter 610, RSMo.

9 3. The general assembly may appropriate moneys from appropriate funds  
10 including the merchandising practices revolving fund established in section 407.140 for the  
11 purposes of establishing and operating the state database.

12 4. No later than February 1, 2004, the attorney general shall promulgate rules  
13 governing the establishment and administration of a state database as necessary and  
14 appropriate to fully implement the provisions of sections 407.1135 to 407.1147.

15 5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,  
16 that is created under the authority delegated in this section shall become effective only if  
17 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if  
18 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
19 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,  
20 to review, to delay the effective date or to disapprove and annul a rule are subsequently  
21 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
22 adopted after August 28, 2003, shall be invalid and void.

407.1144. Any person or entity who initiates the transmission of any electronic mail  
2 message to any subscriber in this state for the purpose of encouraging the purchase or  
3 rental of, or investment in, property, goods or services, other than a communication  
4 responding to an electronic mail message initiated by the subscriber, shall, at the beginning  
5 of such message, clearly state the identity of the person or entity initiating the transmission.

407.1147. 1. The attorney general may initiate proceedings relating to a knowing  
2 violation or threatened knowing violation of sections 407.1135 to 407.1147. Such  
3 proceedings may include, without limitation, an injunction, a civil penalty up to a  
4 maximum of five thousand dollars for each knowing violation and additional relief in any  
5 court of competent jurisdiction. The attorney general may issue investigative demands,  
6 issue subpoenas, administer oaths, and conduct hearings in the course of investigating a

7 violation of sections 407.1135 to 407.1147.

8       **2. In addition to the penalties provided in subsection 1 of this section, any person**  
9 **or entity that violates sections 407.1135 to 407.1147 shall be subject to all penalties,**  
10 **remedies and procedures provided in sections 407.010 to 407.130. The remedies available**  
11 **in this section are cumulative and in addition to any other remedies available by law.**

12       **3. It shall be a defense in any action or proceeding brought pursuant to this section**  
13 **that the defendant has established and implemented, with due care, reasonable practices**  
14 **and procedures to effectively prevent the transmission of unsolicited electronic mail**  
15 **messages in violation of section 407.1138.**

16       **4. No action or proceeding may be brought pursuant to this section:**

17       **(1) More than two years after the person bringing the action knew or should have**  
18 **known of the occurrence of the alleged violation; or**

19       **(2) More than two years after the termination of any proceeding or action arising**  
20 **out of the same violation or violations by the state of Missouri, whichever is later.**

21       **5. A court of this state may exercise personal jurisdiction over any nonresident or**  
22 **his or her executor or administrator as to an action or proceeding authorized by this**  
23 **section in the manner otherwise provided by law.**

24       **6. No telecommunications utility or Internet service provider that carries an**  
25 **unsolicited electronic mail message over its network shall be held liable for violations of**  
26 **section 407.1138 or 407.1144 when another person or entity initiates the transmission of**  
27 **that message.**

28       **7. This section shall become effective on July 1, 2004.**